

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

EDDIE LEWIS BREWSTER,

Petitioner,

Case Number 06-10766  
Honorable Thomas L. Ludington

v.

SUSAN DAVIS,

Respondent.

/

**OPINION AND ORDER GRANTING IN PART AND DENYING IN  
PART PETITIONER'S MOTION TO AMEND HABEAS CORPUS AND MOTION  
TO LIFT STAY OF PROCEEDINGS, REOPENING HABEAS CORPUS  
PROCEEDING, AND REQUIRING RESPONSIVE PLEADING**

Petitioner Eddie Lewis Brewster, presently confined at the Newberry Correctional Facility in Newberry, Michigan, filed a pro se petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his 2002 conviction for first-degree home invasion. Petitioner also filed a Motion for Stay of Proceedings asking the Court to stay further proceedings to allow him to return to state court and present certain unexhausted claims related to alleged ineffective assistance of counsel. The Court granted Petitioner's motion, stayed the petition while instituting certain conditions under which Petitioner was required to proceed, and administratively closed the case.

The Court required Petitioner to file a motion for relief from judgment within sixty days from the date of the Court's order staying the petition and further required Petitioner to seek leave to lift stay and file an amended petition within sixty days after the conclusion of state-court proceedings. Petitioner states that he has now exhausted his state court remedies and seeks permission to lift the stay in this matter and amend the petition. According to Petitioner, the Michigan Supreme Court

denied his application for leave to appeal the trial court's denial of his motion for relief from judgment on November 25, 2008. Petitioner signed his motion to lift stay and reinstate case on December 19, 2008. Thus, he has clearly complied with the second court-imposed condition, that is, he has sought leave to reopen the habeas proceeding within sixty days after the conclusion of state-court proceedings. However, based upon Petitioner's motion, the Court cannot determine whether Petitioner filed his motion for relief from judgment in the trial court within sixty days of this Court's order granting a stay. The Court, nevertheless, will permit Petitioner to reopen the habeas corpus proceeding. The Court does so without prejudice to Respondent's right to assert in a responsive pleading that Petitioner failed to comply with the terms of the Court's order. Although the title of Petitioner's motion indicates that Petitioner seeks leave to amend his habeas corpus petition, he does not attach an amended petition or indicate in what way he seeks to amend the petition. Therefore, the Court shall deny this portion of his motion without prejudice.

Accordingly, it is **ORDERED** that Petitioner's "Motion to Amend Habeas Corpus and Motion to Lift Stay" [Dkt. # 24] is **GRANTED** in part and **DENIED** in part. Petitioner's request to lift the stay is granted. His request to amend the petition is denied without prejudice because he fails to attach an amended petition or to indicate in his motion what claims he seeks to add by amendment. Petitioner may renew his motion to file an amended Petition on or before **April 17, 2009**. Petitioner's motion to file an amended petition shall include a proposed amended petition. If he fails to file a motion to Amend Petition by that date, his habeas petition will present only those claims raised in the original petition.

It is further **ORDERED** that Respondent file an answer responding to the allegations of the petition (including those added by amendment, if any) in accordance with Rule 5, Rules Governing

Section 2254 Cases, on or before **June 17, 2009**.

It is further **ORDERED** that the Clerk of Court reopen this case for statistical purposes and serve a copy of the amended petition and a copy of this Order on Respondent and on the Attorney General for the State of Michigan.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: February 19, 2009

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 19, 2009.

s/Tracy A. Jacobs  
TRACY A. JACOBS